

SUNSHINE

■ Continued from A1

"extensive" research, charging for time to redact information and deciding which hourly rate to charge makes the billing, at times, inconsistent.

Marymont said that when the "extensive use" provision is used to dissuade residents from getting information, the spirit of the Sunshine Law is being violated.

Lee County residents and the media paid about \$13,000 last fiscal year to a handful of local agencies. That number does not include requests between the 25 departments within Lee County, which are not tracked.

According to an information rights advocacy group, the problem is deterring the public from its right to know; there is no legislation proposed to fix the problem.

Most requests are simple, innocuous. Maybe it's a land document or internal memo.

The agency generally provides information on the spot in minutes, often without charge.

"Probably we do so without charging because to invoice, track, and allocate to the appropriate funds would cost more than we would collect if charged," said Assistant County Manager Pete Winton, the go-to guy for media requests to the county.

Then there's the other extreme. Last year The News-Press won a nearly three-year battle to acquire hurricane relief information from the U.S. Department of Homeland Security. In December, the federal government agreed to pay \$105,000 in newspaper attorney fees. It was a victory for the newspaper, but fell short of covering the total cost to win the case.

Somewhere between six-figure legal battles and one-page photocopies are public records amounting to hundreds, even thousands of dollars.

A News-Press request to the South Florida Water Management District for all memos and e-mails about a controversial culvert proposed under Interstate 75 in Estero returned more than 35,000 e-mails and 600 pages of e-mails and memos. The final total: \$476.

A nearly \$500 tab for an interested person is a deterrent to the quest for public information, said Barbara Petersen, president of the First Amendment Foundation, a public information advocacy group in Tallahassee funded by the media.

"I think that fees are frequently a barrier to public access and we have to figure out a way that makes it equitable and fair," Petersen said. "I don't think agencies should go in the hole for public access, nor should they charge a fee that is unreasonable."

Lee County has been excellent to work with, said Sal Grosso a member of the Golden Goose Committee of the Lee County Republican Party. That's praise from the group digging into the county's budgetary practices.

"Our access to information has been pretty good," Grosso said.

Criminal and personal injury attorney Michael Hornung said that before Sheriff Michael Scott won the 2004 election, the sheriff's office was the worst agency for public records in Lee and the three surrounding counties. He is able to make a request, read and tag the pages he wants copied. He said when requests cost more than about \$50 the charge is passed on to his client.

Attorney Aaron Pruss with Becker & Poliakoff said he often makes large requests with the Department of Community Development and the charges have been expensive, but fair.

"I have not found it to be disproportionate to what we have requested," Pruss said.

No cow is more sacred than the 15-cent copy.

"The 15-cent thing is set in cement," Peterson said.

She's not sure how that happened, either.

State public records law allows governments to charge up to 15 cents per copy, and up to an additional five cents for a two-sided copy. Most governments charge the maximum.

Court documents cost \$1 per page.

"I suggested that they contract with Kinko's," Petersen said, half joking.

That company charges 8 cents for standard black-and-white copies.

It's the same idea Rep. Trudi Williams, R-south Lee County pitched in December when asked by The News-Press what is reasonable cost for records.

"If someone had asked me for a public records and it was huge and I had a stack of papers this

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■ **Searchable database:** Review the results of the document requests made by our staffers and members of Team Watchdog.

■ **Learn more:** Find out more about public records and how to request them.

■ **Sample letters:** Learn how to write your own public records request.

much I would send it out to Kinko's or something like that and submit the invoice for you guys to pay," Williams said.

The Legislature has decreed access to records should not be a profit-making or revenue-generating operation.

"We try to use some common sense. We don't want to charge people," said Lee Community Development spokeswoman Joan LaGuardia. She said if someone is taken away from their job the county will charge. "We do have to be mindful of the taxpayer fees."

Two words have created inconsistency in pricing public records — "extensive use."

The law states if the volume of public records requires extensive use of time or resources, government can impose a service charge.

In essence, the public should pay for the time it takes to compile and copy information.

Yet the law does not define "extensive."

"I have heard definitions as long as four hours, and as short as 15 minutes," Petersen said. "There is not enough in the law to say what we can and can't do."

The city of Fort Myers uses 30 minutes as the threshold for extensive use of time, said Dave Workman, who handles public requests. The Lee County attorney's office sets the bar at 15 minutes.

Sometimes there is inconsistency under the same agency umbrella.

In January, Lee County administration staff converted more than 800 pages of travel logs into five digital files at the request of The News-Press. The \$43 cost came from the 90-minute staff time to pull and convert the information. The alternative was \$132 for copies.

In February, a News-Press reporter requested animal services files that added up to more than 800 pages. The agency charged for 14.5 hours of work at \$19.94 per hour to pull and copy the information. According to Ria Brown, animal services spokeswoman, a clerk sifted through files to find the reports, causing the task to take about two full work days. Final cost, including 15 cents per copy, was \$419.

When government agencies charge for service time, court precedent is conflicting about how much should be charged.

A 1999 circuit court decision states an agency should only charge the clerical rate, not including benefits, even if staff shortages meant a person who is paid more did the work. A district court opinion filed in January booting that notion, ruling the cost should be based on salary and benefits of the person who performed the work.

As a result, different agencies charge different hourly rates after different lengths of time.

"Community Development doesn't have a policy," LaGuardia said. "We just try to apply some common sense."

Extensive use or charging to redact information frustrates Petersen. "There isn't any consistency and there probably won't ever be," she said.

State Attorney's Office spokeswoman Samantha Syoen said her office does not charge for the time it takes to redact private information, a legal requirement for government agencies.

In a Dec. 13 invoice the county outlined Serenko's charges. In addition to copying fees, they billed her for work at various county levels to pull together information. It included:

■ 1 hour administrative services director, \$84.61.

■ 1 hour employee relations specialist, \$39.04.

■ half-hour human resources manager, \$24.11.

■ half-hour senior business analysts, \$20.69.

■ half-hour human resources information systems manager, \$28.61.

■ Paper production - 174 pages at 15 cents per page, \$26.10.

Serenko said she spoke in mid-December by phone with County Attorney David Owen about the overcharge. Frustrated with inaction by Owen, she filed a sworn complaint with the Florida State Attorney's Office. Serenko said charges should have been based on the clerk's rate not including benefits.

Then a Jan. 23 letter from Lee Deputy County Attorney Andrea R. Fraser agreed Serenko was overcharged.

■ See **SUNSHINE A19**

Documents

News-Press transportation reporter Christina Cepero and News-Press citizen journalist Bob McGuire requested the contract for the Estero Parkway flyover. Both received the documents via e-mail at no charge.

What legislators say

In Florida, the Legislature controls open government laws and exemptions. Here is what several area legislators said when asked what is reasonable cost to obtain public records.

"It should never be a burden on the average citizen to have access to his or her government. As far as what that price should be, I don't know, but I'm always concerned about that ... I think right now we don't have enough access to our government."

— **Sen. Dave Aronberg, D-Greenacres**

"It shouldn't cost any more than the cost of producing the document. In other words, actual costs. ... Many, many of the documents today are online, so rather than having somebody in Tallahassee's staff doing the pulling of the documents, a lot of them you can get on your own any more."

— **Rep. Gary Aubuchon, R-Cape Coral**

"I would stick with what has been historically done in our community. I have not received any complaints about that ever."

— **Rep. Nick Thompson, R-Fort Myers**

"Reasonable would be you would have to establish a cost per sheet that you are copying. And then whoever is pulling together the public records request, you know, whatever their hourly rate is, that is certainly fair game because you are pulling them off of what they should be doing to pull together all those public records."

— **Rep. Trudi Williams, R-south Lee County**

"It's quite clear if you're taking up time from public agency, they need to be compensated — it shouldn't focus on newspaper, it could be Joe Blow down the street — just has ax to grind."

— **Rep. Michael Grant, R-Port Charlotte**

"My understanding has always been that the reasonable cost is kind of the actual cost so if it costs 3 cents a page that's what you should be paying. If you have to have a clerk that has to do some research and access records then I think whatever their actual cost is."

— **Sen. Burt Saunders, R-Naples**

"If it's \$10,000 that's an impediment toward people — that's wrong. ... Most people want open government. ... Can't have a situation where you have a staff tied up and not getting any reimbursement."

— **Rep. Paige Kreegel, R-Punta Gorda**

Where the money goes

The News-Press asked local agencies how much money they collect each year from public records requests, and where the money goes.

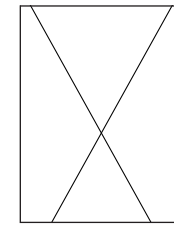
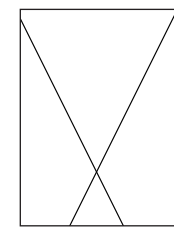
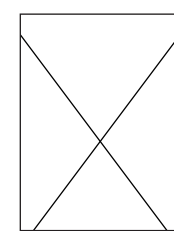
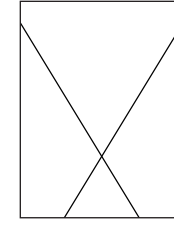
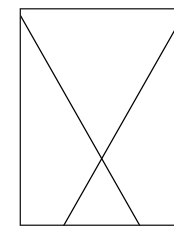
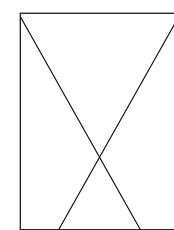
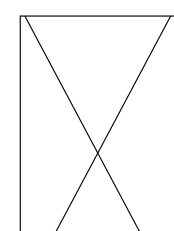
According to Dave Workman with the city of Fort Myers, the money goes into the general fund: "The money that is collected is usually to cover the cost of printing the job or anything over a half-hour that is spent by myself or any of the people here at the city to cover the cost of time spent and the money and paper and maps that are involved."

\$1,737 How much in fiscal year 2007 was paid to the Lee County Public Schools Communications Department for requests.

25 Number of departments and divisions fulfilling requests that Lee County government does not track money from. For significant requests, "we do charge for time and supplies and, I can tell you, have significant discussions amongst ourselves about making sure that we are charging only a fair cost to recoup expenses," said Assistant County Manager Pete Winton.

\$2,951 How much in fiscal year 2007 the State Attorney's Office collected in public records payments in Lee County, according to spokeswoman Samantha Syoen. The money is deposited into a general revenue operation account, which is used to offset costs of copy paper, toner and copier maintenance. She said the office doesn't charge for time employees take to make copies or to redact protected information.

98 Percentage of all requests fielded by the Lee County sheriff's public information office. Last year it charged \$8,603 for this service. It turned over the money to the county, which returned it to the sheriff's office to meet expenses such as overtime and operations costs.



Facts about costs

- The Legislature requires all record custodians to provide access to public records, and it shouldn't be considered a profit-making or revenue-generating operation.
- All state, county and municipal records are open for inspection and copying by any person.
- A person has the right to photograph records.
- There is no provision prohibiting agencies from charging indigent people or inmates fees to obtain copies of public records.
- An agency should not charge sales tax when providing copies of public records.
- Labor unions seeking information from the employer with whom it is locked in a collective bargaining negotiation are not exempt from the public record act.

- An agency may not charge for travel time and retrieval costs for public records stored off premises.
- The charge to obtain copies from the courts is \$1 per page.
- The law authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8½ inches or less. It can charge up to 20 cents for two-sided copies.
- In a divided decision, a 1991 district court of appeal ruled "extensive" to mean it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested information.

Source: Government-in-the-Sunshine Manual

